

Number: **WGT4745**



Llywodraeth Cymru
Welsh Government

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Welsh Government

White Paper

Further and Higher Education (Wales) Bill

Date of issue: **2 July 2012**

Action required: Responses by **24 September 2012**

Further and Higher Education (Wales) Bill

Overview

This White Paper sets out the Welsh Government's legislative proposals in relation to further education (FE) governance and higher education (HE) reform.

The proposals for FE are informed by the Office for National Statistics' decision to reclassify colleges as part of central government for the purpose of National Accounts. The Welsh Government intends to reverse the reclassification, reflecting the maturity and successes of the sector. The reversal will require reforms to the Further and Higher Education Act 1992 and this document sets out those key reforms.

The HE proposals are informed by Programme for Government commitments and the introduction of new HE funding and student-support arrangements from academic year 2012/13. These proposals relate to: new arrangements for quality assurance and enhancement of HE provision; provision for effectively funded student unions and purposeful student charters; powers of direct funding of HE provision; and amendments to the functions of the Higher Education Funding Council for Wales in light of the new funding and student-support arrangements.

How to respond

Response forms should be e-mailed or posted to the address below to arrive by **24 September 2012** at the latest.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The White Paper and response form can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations/education/feandhebill/?lang=en

Contact details

For further information contact:
Brendan Murtagh
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

e-mail: feandhewalesbill2013@wales.gsi.gov.uk
Tel: 029 2082 6585

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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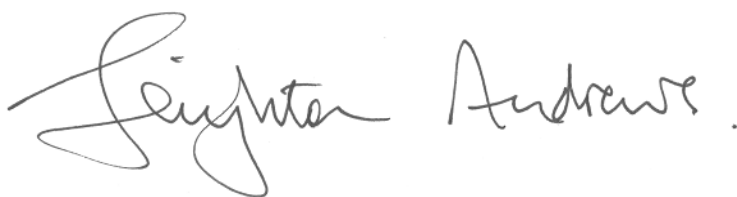
1. Ministerial foreword

Further education institutions (FEIs) and higher education institutions (HEIs) are at the core of the Welsh Government's lifelong learning agenda for Wales. Together, they help to make a reality of our ambitions for a knowledge and skills-based economy. They are also significant contributors to the social fabric and wellbeing of Wales – they are both shaped by and help to shape the society of which we are all part.

It is essential in the interests of learners and the wider society which they serve that FEIs and HEIs are governed well and made properly accountable. Significant changes are under way across the UK in relation to the governance of FE and HE.

Our proposals for Wales are influenced by two key considerations: in relation to FEIs the implications of the recent decision by the Office of National Statistics to reclassify those establishments as part of central government for the purpose of National Accounts; and in relation to HEIs the need to reshape the framework of accountability and control which operates through the Higher Education Funding Council for Wales (HEFCW) to take account of the new tuition fee and funding regime being introduced from September this year. The proposals in this White Paper aim to ensure that in Wales, and in both sectors, appropriate and proportionate arrangements are in place to provide for effective governance and accountability for public funds.

These proposals are published for consultation. The Government intends to bring forward legislation which will put these proposals into law. I invite and welcome views from all key stakeholders on the ideas put forward in the White Paper. Your contributions will help to ensure that we get the right framework in place for Wales, and that FEIs and HEIs continue to prosper within a robust system of governance and accountability.

A handwritten signature in black ink, reading 'Leighton Andrews'.

Leighton Andrews AM
Minister for Education and Skills

2. Principles of reform

2.1 Further education (FE) reform

The Welsh Government recognises the maturity of the FE sector in Wales and believes that colleges, rather than government, are best placed to determine how the needs of their learners and local communities should be met; based within the strong and vibrant Welsh culture of collaboration, co-operation and partnership working. This culture is central to the future success of the sector.

The Welsh Government intends to remove a number of restrictions and controls on colleges without changing the principal powers of colleges to provide further, higher and (within some limits) secondary education.

The Further and Higher Education Act 1992 (FHEA) created FE corporations, each with a governing body that determines the educational character and mission of the college and ensures its overall well-being and financial solvency. The FHEA also created designated institutions. In Wales there are currently 14 FE corporations¹ and four designated institutions. For the purpose of this White Paper, designated institutions and FE corporations are collectively known as colleges.

From their inception colleges were classified as “Non-profit Institutions Serving Households” (NPISH), often known as the 'third sector'. In National Accounts terms NPISH does not require college accounts to be consolidated with those of Government. In October 2010, the Office for National Statistics (ONS) announced that it had chosen to reclassify colleges as part of central government. The classification was determined by the key powers and controls provided to the Welsh Ministers (in respect of colleges in Wales) in the FHEA.

In January 2012, the ONS summarised its position by explaining that the classification is determined by where control lies, rather than by ownership or whether or not the entity is publicly financed. International guidance defines control as the ability to determine general corporate policy.²

Given the attendant controls and restrictions that this reclassification could have for Welsh colleges, the Welsh Government intends to seek to reverse the decision so that colleges are again classified as NPISH.

This White Paper sets out the powers and controls the Welsh Government is reviewing to increase the autonomy and freedoms of colleges in Wales. It also invites you to share your thoughts and views with the Welsh Government on the proposals.

¹ This does not include Merthyr Tydfil College, University of Glamorgan, which ceased to exist as a FE corporation in 2006

² UK National Accounts sector and transaction classification: A summary of the classification process (Office for National Statistics, January 2012) page 6

2.2 Higher education (HE) reform

The Welsh Government is committed to developing a strategic and forward thinking HE sector in Wales which will form a stronger part of both society and the economy.

Ministers wish to create a system of HE which consists of fewer, stronger HEIs able both to compete internationally in terms of research and student experience and to develop an internationally competitive economy around them.

Students and staff must have a stronger voice in the running of HE. Institutions must strive beyond maintaining academic standards and focus on improvement to ensure that students are provided with the highest quality learning experience.

New funding arrangements that are already in place will ensure substantial and continuing public investment in Welsh HE, equipping HEIs to build research capacity and performance, supporting improvements in teaching and addressing other national strategic priorities.

An efficient, modern and effective system of governance at national and institutional level is central to driving improvement and delivering a dynamic and responsive system of HE in Wales. An appropriate system of governance helps deliver excellence and competitiveness and will support the sector in contributing to the needs of a modern, knowledge-based, globally competitive economy and inclusive society.

An independent review into HE governance in Wales, chaired by John McCormick, commenced in June 2010. The review was tasked with evaluating national and institutional governance to ensure its suitability for sustaining an effective and efficient system of HE in Wales that fully met current and future learner needs. McCormick's report, *Achievement and Accountability - The Independent Review of Higher Education Governance in Wales*, was published in March 2011.

Ministers believe there is a need for radical change in the HE sector, and the findings of the McCormick Review supported this view. However there is already significant transformation under way: the size, shape and structure of the sector are still evolving and new arrangements are being put in place for funding HE provision and student support. Taking these changes together with the demands facing the sector in the current economic climate there is a danger of doing too much too soon. Change is imperative but the focus on reconfiguration must not be lost and change must not take place at the expense of the quality of HE provision or the reputation of our institutions.

The Welsh Government is therefore adopting a staged approach to HE reform in Wales. Initially, the focus will be on reconfiguration of the sector to ensure that we have a smaller number of stronger universities which are more sustainable and better equipped to meet the needs of both learners and the Welsh economy. Ministers propose to allow time for reconfiguration to progress and for the new funding arrangements to embed, before looking afresh at HE governance arrangements in the round. In 2013/14 we will consider, in consultation with stakeholders, the McCormick Review recommendations against the reconfigured

sector and in light of the new funding arrangements, before determining whether legislation is required to effect any further changes.

The purpose of this White Paper in relation to HE is therefore to consult on the more limited legislative changes necessary to ensure that the Higher Education Funding Council for Wales (HEFCW) has the appropriate powers and duties for its continued operation under the new funding arrangements for HE provision. In addition, we propose to strengthen the Council's statutory duties in relation to assessing and enhancing the quality of HE provision as well as implementing Programme for Government commitments in respect of strengthening the learner voice and improving the student experience. The Welsh Government intends to bring forward a Further and Higher Education Bill in 2013 which will give legislative force to the Welsh Government's proposals where required. The proposals in this White Paper, and provisions in the Bill to follow, complement the changes already being driven forward using existing powers to restructure the HE sector in Wales and the new arrangements being introduced for HE funding and student support.

3. Our proposals – FE

3.1 Background

Classification of organisations, for the purposes of compiling National Accounts, is carried out by the ONS (which is independent of Government) in accordance with international and EU agreed guidelines. In carrying out classifications, ONS follows an impartial and transparent procedure which is independent of the political process.

In October 2010 the ONS concluded this means that all publicly funded education institutions in the UK, responsible for educating people to the age of 18, should be classified as ‘public sector bodies’. The ONS has, therefore, reclassified colleges as public sector bodies, with the reclassification being applied, retrospectively, to their inception in 1993.

The change is an outcome of a review ONS was obliged to carry out following the introduction of the Apprenticeship, Skills, Children and Learning Act (ASCLA) 2009 which created sixth-form college corporations in England.

During the review, ONS reviewed the existing classification of other colleges in the UK using the European Manual on Government Deficit and Debt, which states that, in the case of schools:

“The general government controls a school if its approval is needed for creating new classes, making significant investments in gross fixed capital formation or borrowing; or if it can prevent the school from ending its relationship with government.”

According to ONS these decisions mean that all publicly funded education institutions in the UK responsible for educating people to the age of 18 are classified in the public sector and they decided that colleges in England and Wales should be reclassified to Central Government, from their inception in April 1993.

Colleges of Further Education in Scotland and Institutions of Further Education in Northern Ireland have also moved from NPISH to the Central Government sector from their inception.

3.2 Implications for Welsh Colleges

The ONS decision does not affect the legal status of colleges as autonomous bodies and colleges will continue to be responsible for their own financial viability, but they will be treated differently for National Accounts purposes.

The impact of this are two-fold (i) there would be changes to the way financial information from colleges is collected and monitored (ii) the classification could, in the long term, impact on how colleges manage their own internal affairs.

Changes to the way financial information is collected and monitored is likely to involve the following additional burdens for colleges:

- there would be additional impacts in terms of assessing the budgetary impacts in-year (in addition to the C packs mentioned below);
- Colleges would have to complete a consolidation pack, known as a 'C-pack'. A comprehensive form that captures the financial information of an organisation for the year to 31 March and enables any transactions between bodies in the consolidation to be identified and eliminated. The C-packs would be submitted to the Welsh Government and would need to be audited;
- their financial years would need to be aligned with the public sector's i.e. from 1 April to 31 March; and
- Accounts would need to be prepared under International Financial Reporting Standards (IFRS) as well as UK Generally Accepted Accounting Principles (GAAP) (accounting standards), if consolidation occurs before 2015/16.

These changes would have significant implications for colleges including:

- any surpluses generated by colleges would become Welsh Government funds;
- Colleges would be unable to retain the surplus in order to build reserves to pay for projects in the future for example capital or restructuring.

Taken together, these changes that could potentially stifle future partnership working, innovation and collaboration in the FE sector, need to be avoided. Colleges must have the ability to make their own judgments and decisions on how best to manage their own internal affairs for the benefit of learners, employers and their communities.

3.3 Key areas of change

The four key areas that are indicative of public sector control and which the Welsh Government is proposing to amend are:

- greater autonomy for colleges on their Instrument and Articles of Government;
- the ability of a college to dissolve itself;
- greater freedom for colleges to borrow funds; and
- intervention by the Welsh Government.

Each of these key areas is looked at in more detail below.

Instrument and articles of government

It is proposed that the process of making changes to Welsh colleges' Instrument and Articles will cease to be the responsibility of the Welsh Ministers and will become a matter for colleges. Only essential elements of governance that will enable colleges to properly constitute and conduct themselves will be a requirement.

These essential matters will include how governors are appointed. Specifically, governing body places will be protected to guarantee involvement by staff and learners in governance matters. This is especially critical given that proposals for Membership Bodies which would include learners and staff, will now be voluntary, rather than imposed by statute. To safeguard the valuable input made by both staff and learners, Welsh Ministers are proposing that the Instruments and Articles of Government continue to require categories for learners and staff on the governing body.

The need for a principal/chief executive and clerk, the responsibilities of the governing body, and that no changes can be made which would lead to the loss of the college's charitable status will also be included in a colleges Instruments and Articles.

The requirements leave the potential for greatly increased flexibility for colleges e.g. colleges will have the freedom to make changes to their governing body composition and ways of working, powers which the governing body can delegate. For most colleges this change will make no difference, but it will enable colleges that want to develop and improve their governance in response to the needs of their students, employers and local community to do so.

The proposed amendments that are set out in this White Paper will need to be addressed by colleges to ensure they comply with the new requirements. For example, the need for a provision for the college to dissolve itself will need to be included, and no changes to be made which would lead to the loss of charitable status.

The Welsh Government will work alongside Colegau Cymru to develop a Code of Governance for the sector which incorporates the Nolan principles³ and best practice to assist colleges.

Initial instrument and articles of a college will remain prescribed by Regulations made by the Welsh Ministers.

Dissolution and mergers of corporations

The second area will be the removal of Welsh Ministers' power to dissolve a college, known as dissolution.

³ The Nolan Principles are the seven standing principles set out by the Public Standards Committee that should apply to all holders of public office.

In place of this power will be the ability of a college to dissolve itself and for the transfer of the college's property, rights and liabilities to another body. It is proposed that the new power for colleges will be made subject to a number of safeguards, recognising that colleges are providers of an important public service and are in receipt of significant amounts of public funding.

It is proposed that legislation will include provision for the Welsh Ministers to make Regulations prescribing the process before dissolution can take effect and to which bodies a college can transfer its property, rights and liabilities to on dissolution.

The regulations will ensure transparency and appropriate consultation with all key stakeholders, including local and college populations.

Borrowing

Currently colleges require the Welsh Ministers' authority before entering into any borrowing arrangement. This power is not thought to be necessary to ensure appropriate management of debt risk within the FE sector, and therefore it is proposed that this requirement will be removed.

Intervention

Existing legislation provides the Welsh Ministers with significant powers to tackle failure in colleges to safeguard learning, and this will be retained. In addition, and to reflect the dissolution powers set out above, it is proposed that the Welsh Ministers will have power to direct a college to dissolve itself.

It is proposed that the new legislation will still enable the Welsh Ministers to intervene if:

- the college's affairs have been or are being mismanaged by the governing body;
- the college's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
- the college's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act;
- the college is performing significantly less well than it might in all the circumstances it is reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.

Should these circumstances arise; the Welsh Ministers will have the power to:

- remove all or any of the members of the institution's governing body;
- appoint new members of that body if there are vacancies;

- require a governing body to make collaboration arrangements; and/or
- require a governing body to make a resolution to be dissolved on a date specified in the direction.

Other proposed amendments include the following.

- Power to appoint up to two members of a governing body. This allows the Welsh Ministers to appoint up to two additional members of a corporation if that is felt to be appropriate. The removal of this power does not prevent the Welsh Ministers from using their existing intervention powers to remove all or any of the members of a college's governing body should the circumstances arise. The onus will be on colleges to seek help by bringing in people with the necessary skills to help them resolve any difficulties.
- Existing provisions prevent a college being conducted through a subsidiary arrangement, (such as a limited company or charitable incorporated organisation) without the consent of the Welsh Ministers. It is proposed that this will also be removed, giving colleges the freedom to enter into innovative partnership for the delivery of education, and putting them on a footing with HEIs.

The above proposals capture the key powers that need to be reformed to help enable colleges to be categorised as NPISH releasing them from unnecessary burdens. The Welsh Government will consider other powers and requirements currently placed on colleges and which are no longer considered necessary, do not add value and/or act as a barrier to the NPISH classification being re-applied to colleges.

3.4 What do these changes mean?

Colleges will continue to be accountable for the use of public funds but a new partnership will be forged between the Welsh Government and colleges which will give colleges increased responsibility to manage their affairs. There will be a greater reliance on the general law rather than on education-specific legislation.

In return, the Welsh Government will expect colleges to become increasingly accountable to their local communities and to learners, building on the tenets of the Humphreys Report⁴ published in March 2011 which promoted a more transparent accountability to stakeholders. This will now be achieved through the use of best practice guidance, as opposed to regulation.

We also anticipate a key role for Colegau Cymru in leading the sector and ensuring a sense of shared responsibility across all colleges, for example, developing a code of practice.

Where appropriate, the Welsh Government will develop regulations to assist colleges to navigate their increased freedoms in the most effective way and to ensure the

⁴ Independent Review of the Governance Arrangements of Further Education Institutions in Wales

best interests of the learner are protected. For example, regulations will be developed, in conjunction with the sector, to set out the process a college should follow if it wishes to dissolve itself. Decisions by colleges that fail to comply with Regulations could result in a legal challenge from stakeholders.

3.5 The FE landscape – where are we now?

Colleges in Wales are the recipient of considerable public monies (£312 million in 2012-13, excluding Work Based Learning), and are integral to the delivery of key components of the Welsh Government's economic, social and education and training policies. As a result of the need to increase choice for young people, colleges now provide over 60 per cent of the learning funded by the Welsh Government, for mainstream provision for 16-19 year olds. This has resulted in a changing balance of activity within colleges, with provision for young people now sitting alongside vocational courses for adults and adult community education as their core business.⁵

The potential impact of tighter controls and increased bureaucracy would be significant as colleges have a pivotal role to play in the Welsh economy and the Government's ambition to develop the skills of the nation⁶. The First Minister has already identified skills as a priority alongside health and education for the future - underlining the significance of the skills agenda to future prosperity in Wales. "*Standing Up for Wales*" identified skills as being central to making Wales a highly attractive place to live, invest, employ and grow.

Welsh colleges play a central role in the four key areas that have been prioritised by the Welsh Government for investment:

- enabling young people to achieve their full potential through the development of skills, qualities and qualifications;
- encouraging investment in skills as a driver of productivity and growth;
- supporting routes to sustainable jobs for the disadvantaged and unemployed; and
- ensuring the learning infrastructure has the capacity to deliver skills and training for a modern bilingual nation.

Many colleges in Wales are progressing the Skills agenda not only in the UK, but also on an international level. For example, the official launch of the Wales-Chongqing FE Consortium took place in October 2011, acting as a catalyst for the development of new partnerships that will be of mutual benefit to both countries.

⁵ In 2011/12 colleges received a total of £33.8 million for work based learning delivery. Of this, £14.2 million was used for the provision of 16-19 year olds, which represents 30 per cent of the total 16-19 provision within the work based learning sector.

⁶ Work Based Learning provision in colleges has increased by 53.35 per cent between 2004-5 and 2010-11. In 2010/11 there was a rise of 1.6 per cent in those aged 19, reflecting a decision by many young people to seek the FE route into career qualifications. Full time learners at FEIs has increased by 10.7 per cent between 2004-5 and 2010-11

The Consortium aims to enrich the experiences of students and college staff in both countries through:

- promoting and developing international student recruitment
- planning and providing professional development for staff including developing specialist vocational courses as well as strengthening quality assurance and management systems
- exploring the potential for in-company corporate training and the up-skilling of migrant workers and technicians in rapidly developing Chongqing.

3.6 Reducing bureaucracy

Our proposals to release colleges from unnecessary burdens and controls are not happening in isolation. Other key changes have already happened, or are happening, acknowledging the maturity of the FE sector.

3.7 Quality Effectiveness Framework

Success rates for 2010/11 published in April 2012 confirmed that the overall success rate for FE had been maintained at 81 per cent⁷. Supporting the statistics is the Chief Inspector's 2010/11 Annual Report which highlighted of the following strengths in the colleges inspected.

- All learners on vocational and academic programmes make good or adequate progress in developing the skills and knowledge that are relevant to their courses of study.
- Learners feel safe and nearly all enjoy their programmes.
- There are good progression routes from Entry level through to Level 3.
- Institutions give learners good opportunities to develop and improve their literacy, numeracy, and information and communication skills.
- Arrangements to care for support and guide learners are good or very good.

Reflecting colleges' performance, DfES has been streamlining and simplifying requirements placed on colleges. The Quality and Effectiveness Framework for post-16 learning, launched in 2009, highlighted a new risk-based approach to performance management, stating that 'providers with a good track record of performance can therefore expect to see a "lighter touch", especially in relation to some of the more routine monitoring activities such as self-assessment evaluation'. The previous quality assurance model, Provider Performance Review, involved a

⁷ Success is defined as the proportion of all terminated learning activities that have been both completed and attained

'blanket' approach to annual reviews of each provider's quality and standards. Since 2009, this has been replaced with desk-based monitoring of learner outcomes. Only colleges and providers whose performance falls below a 'good' level are required to demonstrate that action is underway to improve standards.

While colleges are still required to submit an annual self-assessment report to DfES, guidance has been aligned with the Estyn Common Inspection Framework. In 2012, requirements to complete separate annexes on Basic Skills and Welsh Language Education were removed, and colleges have been encouraged to submit concise, evaluative reports rather than detailed documents.

Data requirements on colleges have also been reduced. The Lifelong Learning Wales Record (LLWR) is reviewed each year to identify data fields which could be removed, and in 2011/12 a review of every field was undertaken, with data 'owners' required to justify the retention of their fields. Over the last three years, 19 LLWR fields have been removed through these reviews.

In addition, peer review in the sector has been driven forward over a number of years, with training delivered by Colegau Cymru and Estyn. Colleges share their data transparently so that performance can be benchmarked and best practice shared.

3.8 Simplifying the post-16 planning and funding system

The Post-16 Planning and Funding Review is looking at designing a planning and funding model which better aligns with Welsh Government policies and supports the key tenets of the 14-19 Agenda and Review of Qualifications 14-19. In an ever changing policy landscape the Welsh Government is seeking a system that:

- is simpler but still enables providers to be accountable, innovative and responsive to learners and employers;
- reduces unnecessary bureaucracy imposed by process and systems to maximise time and money going to front-line services; and
- achieves a better balance of investment in skills between government, individuals and employers.

The new system is scheduled to be implemented in 2013/14. Colleges are participating in the stakeholder forum to ensure that the new system enables them to deliver high quality learning in a way that is flexible and understood by all.

3.9 Reviewing the complexity of qualifications for 14 to 19-year-olds

A Review of Qualifications for 14 to 19-year-olds in Wales launched in September 2011 is considering how we can achieve the vision of 'qualifications that are understood and valued and meet the needs of our young people and the Welsh economy'. The Review Board is currently consulting on key issues such as:

- how we can simplify the system, and improve communication about and understanding of different qualifications;
- how we can ensure that the most relevant and valuable qualifications are available to young people in Wales.

The Welsh Government looks forward to receiving the Board's report later this year.

3.10 Infrastructure

Transformation policy has stimulated and supported a number of college mergers across Wales. This was further bolstered by the *Structure of Education Services in Wales* report, published in March 2011, which recommended the continued rationalisation of colleges in Wales and their estates, with a view to the establishment of 8–12 FE corporate identities only by August 2013.

The sector has responded well and commitment towards transformation in the sector remains strong. Since 2009, six college mergers have been effected, and colleges continue to explore options for merger and closer strategic working. A further three college mergers are anticipated by August 2013, which should strengthen the learning offered across those regions concerned.

3.11 Capital investment

In December 2011, the Minister for Education and Skills signalled the intent of the Welsh Government to develop a capital investment plan for the FE sector. The Welsh Government has been working closely with the FE sector to formulate a forward capital investment programme that will align with the 21st century schools and all age transformation policy.

Expressions of Interest have already been submitted by FE colleges and it is expected that capital projects will commence by 2014-15 to support the delivery of 21st century learning.

3.12 What are the Next Steps?

It is anticipated that the proposed changes set out in this document will be implemented in 2014–15, following Royal Assent of the Further and Higher Education Act in July 2014.

Your views

The Welsh Government would welcome your views on the proposals that are set out in this White Paper. Specifically:

Question 1: What other changes could be implemented to increase colleges' autonomy?

Question 2: What do you consider to be the advantages of the proposed changes to the Further and Higher Education Act (FHEA)?

Question 3: What do you consider to be the disadvantages of the proposed changes to the FHEA?

Question 4: Are there any unforeseen consequences?

4. Our proposals – HE

4.1 New funding and student-support arrangements

The Welsh Government is introducing new arrangements from academic year 2012/13 in relation to HE tuition fees and statutory student support in Wales.

The Welsh Government has made regulations which prescribe entitlement to the new student support package and also to put in place control measures for the new tuition fee regime. These arrangements will ensure that full-time students ordinarily resident in Wales who commence their first undergraduate degree from 1 September 2012 will pay no more in real terms for their tuition than they would have in the 2011/12 academic year. From academic year 2012/13, students ordinarily resident in Wales will continue to be eligible for subsidised loans to meet the cost of fees up to the current (academic year 2011/12) fee level. The Welsh Government will provide a non-means tested grant for the balance over and above current fee levels.

Thus the Welsh Government is committed to preserving the principle that the state will subsidise HE and maintain opportunities for all. However, in so doing there is a need to control the total cost of HE to the Government's budget. This will be achieved through arrangements to cap the number of publicly funded student places in Wales.

The current regulatory framework for HE tuition fees is underpinned by the provisions of the Higher Education Act 2004 which makes provision for institutions charging above the basic fee amount to secure fair access to HE.⁸ These arrangements have been carried forward in the new fees regime in the form of fee plans. In March 2011, HEFCW was designated as the body with statutory responsibility for the approval and enforcement of fee plans. In line with new arrangements for the regulation of tuition fees from 1 September 2012, all institutions in receipt of funding from HEFCW which seek to charge fees above £4,000 per annum for full-time undergraduate level courses are required to have an approved fee plan in place. An institutional fee plan must set out measures, such as outreach work and financial support, to be delivered by the institution to promote HE and equality of access to HE.

The Welsh Government considers that all HE institutions⁹ and other HE providers offering courses which are designated for the purpose of statutory student support in the form of Government-backed grants and loans for students should be required to comply with the same regulatory controls in order to protect the interests of students, taxpayers and Welsh society.

⁸ Welsh Ministers have made regulations under the Higher Education Act 2004 which set out the requirements for fair access, namely: The Student Fees (Approved Plans) (Wales) Regulations 2011 (SI 2011/884) (W.128) and The Higher Education Act 2004 (Relevant Authority) (Designation) (Wales) Regulations 2011 (SI 2011/658) (W. 96).

⁹ In this paper, references to "HE Institutions" means Chartered Institutions, HE Corporations and Designated Institutions. (Designated Institutions being institutions designated by order under section 129 of the Education Reform Act 1988).

Currently, students ordinarily resident in Wales have access to a wide range of HE courses which are designated for the purpose of statutory student support. Relevant HE courses¹⁰ at publicly funded institutions are designated automatically for this purpose; however, private providers (*i.e.* those which are not currently maintained or assisted by recurrent grants out of public funds) may also request designation for courses that they offer. Under current arrangements, eligible students who are ordinarily resident in Wales may apply for financial support from the Welsh Government to attend designated courses at private providers in the form of a tuition fee loan up to £6,000 per annum.

The Welsh Government considers that it is desirable to maintain access to a wide range of HE opportunities but is keen to ensure that:

- quality of education provision is rigorously assessed (see section 6 of this paper);
- the financial viability of the organisations providing courses which are designated for statutory student support is assured;
- all HEIs and other providers offering courses designated for statutory student support will be subject to, and will have to comply with the Office of the Independent Adjudicator (OIA) complaints scheme (see section 4.4 of this paper);
- sufficient information about course requirements is made available to students and to the public to ensure accountability on quality, access, value for money, financial viability and regularity;
- arrangements are put in place to ensure fair access to HE courses designated for the purpose of statutory student support delivered by private providers (see also section 4.4 of this paper); and
- those private providers which deliver courses designated for statutory student support comply with the same fee cap-requirements and student number controls as educational institutions which are currently maintained or assisted by recurrent grants from public funds.

Under the new funding arrangements introduced from academic year 2012/13, the majority of HE teaching funding will shift from teaching grant, which is currently allocated to institutions by HEFCW under section 65 of the Further and Higher Education Act 1992, to student fee grants and fee loans. By the 2014/15 academic year it is possible that some institutions will no longer be in receipt of teaching grant from HEFCW. This shift in funding arrangements will have implications for the continued discharge of HEFCW's

¹⁰ For academic year 2012/13, these courses are listed in Schedule 2 to the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 (SI 2011/886) (W.130).

statutory functions: specifically, its ability to exercise fee planning, the control of student numbers and quality assessment.

The Welsh Government will therefore seek provision for HEFCW to have regulatory oversight of all HE provision delivered in Wales by HEIs, and also of that delivered by other providers with courses designated for statutory student support specifically:

- a duty on HEFCW to make arrangements to assess and enhance the quality of all HE provision delivered in Wales by HE institutions, providers with degree awarding powers and by any providers which have one or more of their courses designated for statutory student support purposes (but which are not HE institutions or do not have degree awarding powers);
- a power for HEFCW to monitor and require that all providers with courses designated for statutory student support purposes comply with arrangements:

at the provider level, for:

- financial assurance;
- quality assurance; and
- student dispute resolution via the OIA scheme; and

in relation to the courses designated for student support:

- student number controls;¹¹
- information provision about course requirements;
- tuition fee regulation; and
- fair access arrangements.

Question 5: Do you agree that provision should continue to be made for the Welsh Government to provide support to students who seek to access designated HE courses delivered by private providers?

Question 6: What are the advantages and disadvantages of maintaining such support?

¹¹ It is envisaged that the operation of student number controls will be subject to further consultation undertaken by HEFCW.

Question 7: Do you agree that all providers of HE in Wales which offer courses which are designated for the purposes of student support should be required to comply with arrangements:

- **on an institution-wide basis (concerning financial and quality assurance and dispute resolution via the OIA); and**
- **arrangements in respect of individual courses (fair access arrangements, fee regulation, information provision and student number controls)?**

4.2 Supporting partnership and collaborative activities

Reconfiguration is a key aspect of our HE policy. It has been developed over the course of the past decade against a background of ongoing evidence of the need for more strategic reconfiguration in the sector.

Since the publication of *Wales: The Learning Country* (2001), *The Learning Country: Vision into Action* (2006), and *For our Future* (2009), successive Ministers have made clear their commitment to reconfiguration and to rationalising the Welsh HE sector to create a higher quality and more sustainable offering for students. Evidence points to the need for fewer institutions with greater critical mass, building on respective strengths rather than wasting resources competing with neighbours.

The current HE strategy, *For our Future* (2009), therefore sets out the need for fundamental change of the HE system to ensure Wales can deliver strong, successful and financially sustainable provision in the longer-term. In particular, we want institutions to be properly equipped to deliver provision in relation to the twin drivers sets out in the strategy: delivering social justice and ensuring a buoyant economy. In addition to these structural changes, collaboration and partnership activities¹² between post-16 education providers can also be a central driver for change offering proven practical benefits. These include sharing resources where possible in order to release more resources for front-line delivery; driving measureable improvements for learners; and achieving proven infrastructure efficiencies.

The intent of *For Our Future* is to ensure that an increasingly diverse and varied range of learning needs identified in the strategy are fully met by a coherently planned system in which providers coordinate their planning and delivery of provision. A regional planning framework¹³ is a central component of such a system and is intended to incorporate the strengths of both HE and FE providers and to provide a co-ordinated, collaborative and cost effective approach to better tackle endemic problems of low participation and

¹² An example of this type of partnership could be an initiative which aims to stimulate a greater interest in learning amongst disadvantaged groups by offering innovative educational opportunities via collaboration between schools, FEIs, HEIs, private training providers, social enterprises, employers, sector skills councils and communities.

¹³ [W11/29HE: The Regional Dimension to the Planning and Delivery of Higher Education 2011/12](#) - This circular sets out the arrangements for the continuing development of a regional dimension to the planning and delivery of higher education. Date: 02 August 2011

achievement. For Our Future also responds to identified employer need for coherence in workforce training, and contributes to further development in establishing accessible progression opportunities from school and college to university, and workforce development.

In order for Wales to achieve greater effectiveness in the provision of all post-16 education, and ensure that all learners, irrespective of location, have access to opportunities, the Welsh Government wants to ensure that the regional planning framework is integrated with other post-16 planning and collaboration initiatives including the development of local authority consortia and the drive for increasing integration of provision through the Transformation agenda¹⁴. The Welsh Government will therefore seek a provision in the Bill to enable HE provision to be funded directly by Welsh Ministers in instances where it is strategically appropriate to do so. By way of example, such a power could be used by the Welsh Government to tackle any significant failures to meet identified employer needs and learner demand in identified priorities.

This provision will enable the Welsh Government to fully fund partnerships including schools, FE and work-based learning, through to HE and career and professional development provision from a single funding source of Welsh Government funding. The consortium or partnership itself could be funded as opposed to individual providers. A learner could be able to identify provision and appropriate progression opportunities from school through to the workplace within the same collaborative partnership. This should enhance partnership working by enabling better joint planning and delivery of provision, through having a shared mission and reducing competitive behaviour and duplication of provision. A single funding stream may also offer providers other financially beneficial advantages such as:

- less back office resource required to bid for, manage and monitor expenditure, thus allowing greater resource for the front line delivery;
- a single process, reducing bureaucracy and administrative requirements;
- greater economies of scale than several smaller pots ie 'bulk buying';

¹⁴ The Welsh Government policy to transform post 16 education and training provision in Wales was first published in autumn 2008. This signalled the intention to secure outline plans to improve learning opportunities for all post-16 learners in the shortest possible time. Following some early successes, the vision was expanded to encompass an all-age, system-wide approach as signalled in the publication of *Transformation, Y Siwrrnai* in November 2009. The Transformation Programme aims to drive up standards and performance and improve efficiency and effectiveness of provision through transforming both pre and post-16 provision in Wales.

- a potential for collaboration in other areas such as shared services like IT, payroll, marketing, etc.

Question 8: Do stakeholders agree that a provision for Welsh Ministers to directly fund HE in strategically appropriate circumstances would be beneficial for partnership and collaborative activities?

Question 9: A number of advantages have been identified in Section 4.2. Would there be any disadvantages arising from Welsh Ministers funding HE provision directly in strategically appropriate circumstances?

4.3 Quality assurance and enhancement of HE provision

The quality of HE delivered in Wales is at the heart of the Welsh Government's reforms. We would like institutions to strive beyond maintaining academic standards and to focus on improvement to ensure that students are provided with a high quality learning experience. We do not believe in driving up quality on the basis of competition and customer choice and propose an alternative means which does not rely on market mechanisms. We intend to place both quality assessment and enhancement of provision on a statutory footing in Wales and seek to ensure greater involvement of learners in the quality process.

The Further and Higher Education Act 1992 places HEFCW under a statutory duty to assess the quality of the provision it funds or intends to fund, and to establish a quality assessment committee of which the majority of members are to be drawn from outside of the Council.

HEFCW currently exercises this duty through a service level agreement with the Quality Assurance Agency (QAA). The Welsh Ministers do not have powers in relation to the assessment of quality of HE provision.

Under the new fees and funding arrangements to be introduced from academic year 2012/13, the majority of HE teaching funding will shift from HEFCW's teaching grant to fee grants and fee loans. As HEFCW's current statutory powers relate to assessing the quality of the provision it funds, gradually the range of provision that it may assess will diminish as the new funding arrangements are embedded.

In order to enable the quality of HE provision funded through the new student support arrangements to be assessed we intend to secure a new function for HEFCW. This will enable HEFCW to assess the quality of HE provision delivered in Wales by HE institutions, providers with degree awarding powers and any providers which have their courses designated for statutory student support purposes (but which are not HE Institutions or do not have degree awarding powers). The Welsh Government considers that under the new tuition fees regime a greater focus on improving the quality of HE provision is necessary. We therefore intend to place HEFCW under a duty to secure that provision is made for enhancing the quality of such education provided by such institutions.

As the statutory responsibility for quality enhancement will lie with HEFCW, we propose that it will be for the Council to develop the operational detail of the quality enhancement process in conjunction with the sector and appropriate stakeholders. However we would expect quality enhancement to encompass:

- inclusion of enhancement-specific criteria in the quality assessment process;
- provision of improved public information about quality, particularly for learners and employers;
- development of opportunities for a greater voice for student representatives in institutional quality arrangements and/or activities; and
- delivery of specific projects to develop and share good practice and collectively generate ideas and innovative models for encouraging academic staff, support staff and students to share current learning and teaching experiences.

In order to enable the Welsh Government to provide specific advice to HEFCW in relation to quality assurance and enhancement, we will place an additional duty on the Council to have due regard to guidance on these matters provided by the Welsh Government.

Question 10: Do you agree that the proposed statutory duty to secure that provision is made for quality assessment and enhancement should extend to the following:

- all HE institutions,
- providers with degree awarding powers and
- any other providers who offer courses which are designated for the purposes of student support operating in Wales (but which are not HE institutions or do not have degree awarding powers)?

Question 11: In relation to HEFCW having due regard to quality assurance and enhancement guidance provided by the Welsh Government, what guidance would be considered beneficial to quality assurance and enhancement?

Question 12: What other changes could be implemented to make the quality assurance system in Wales more robust?

4.4 Strengthening the learner voice, access arrangements and dispute-resolution procedures in HE

The learner (student) voice is more important than ever in higher education. Students must not be considered as mere homogeneous consumers of education – they are active participants in shaping their own learning. Effective student representation within HE will be paramount in ensuring that the learner voice is heard and acted upon. Proposals to enhance the quality of the student learning experience have been outlined in section 4.3 of this paper.

The Welsh Government wishes to see all HE institutions providing student unions with sufficient funding to deliver a common set of functions¹⁵ and developing student charters¹⁶ in consultation with those student unions. Significant progress has been made on strengthening student engagement in the learning process in recent years and Wales is leading the way in these developments. HEFCW issued final guidance in March 2012 on best practice in the funding of effective, democratic student unions. HEFCW also issued guidance in September 2011 on the development of student charters by HE institutions and student unions. The Welsh Government would welcome feedback on how effectively this guidance has been taken on board and what further steps, if any, are required to ensure that student unions are provided with sufficient funding to deliver a common set of functions.

Currently, a student's access to dispute resolution procedures varies according to the type of provider at which they study. Students who are studying at private providers may, depending on the status of the provider, not be able to make a complaint to the Office of the Independent Adjudicator (OIA). The OIA is an independent body set up to review HE student complaints. The OIA deals with individual complaints against HE institutions in England and Wales. Qualifying institutions, as defined in the Higher Education Act 2004, must comply with the rules of the OIA Scheme.

Private providers that offer courses that are designated for the purpose of statutory student support are not required to comply with fair access agreements via fee plans, unlike HEFCW funded providers which seek to charge fees of over £4,000. HEFCW funded providers commit in their fee plans to invest a proportion of the income they receive from tuition fees to support equality of access to HE and on activities which promote HE in

¹⁵ For example, a common set of functions was included in guidance issued by HEFCW - W12/09HE : Guidance on good practice in funding of effective, democratic student unions, and student representation.
http://www.hefcw.ac.uk/documents/publications/circulars/circulars_2012/W12%2009HE%20Student%20Union%20Funding.pdf

¹⁶ For the purposes of the guidance issued by HEFCW, student charters are high level statements, covering all students and all staff, that set out the mutual expectations of institutions and students. The guidance provides that a charter should be jointly written by the institution and the student union. It should provide signposts and links to more detailed information, such as regulations, student support, and course information.

Wales. Access to courses offered by private institutions and the experience of students studying on these courses, may be impacted by the fact that private providers are not required to invest any of the income they receive from tuition fees in activities to improve equality of access.

As outlined in section 4.1 of this paper, it is proposed that all providers offering courses designated for statutory student support which seek to charge fees above £4,000 per annum for full-time undergraduate courses will be required to have an approved fee plan in place in relation to those courses. In addition, all providers offering courses which are designated for statutory student support will be subject to, and will have to comply with the OIA complaints scheme.

The Welsh Government considers that the fair access arrangements would be improved by strengthening the powers available to the fair access regulator (currently HEFCW in Wales). It intended that the powers available to the regulator to enforce compliance with fee plans might include:

- a power to instruct an institution to invest a specific proportion of its tuition fee income on activities relating to the promotion of access to HE;
- a more flexible range of sanctions; for example, the power to require an institution to obtain and publish an independent evaluation of its access and/or retention activities; or
- a power to make public an assessment of any institution that the regulator considers is not making sufficient progress against the fair access conditions agreed in its fee plan.

Question 13: What impact has the HEFCW guidance had so far on ensuring that student unions are provided with sufficient funding to deliver a common set of functions? What else should be done to satisfactorily achieve this aim?

Question 14: Are the common set of functions for student unions included in the HEFCW guidance appropriate?

Question 15: Has the HEFCW guidance been effective enough in ensuring that HE institutions develop student charters in consultation with student unions? If not, what else should be done to satisfactorily achieve this aim?

Question 16: Do you agree that all HE institutions and providers offering courses designated for statutory student support should comply with:

- fair access arrangements in relation to those courses; and
- OIA student dispute-resolution arrangements (on an institution-wide basis)?

Question 17: How can the fair access arrangements be improved? Do you agree there is a need for legislative change through strengthened powers for HEFCW?